

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Atty Dkt. MNL-707-19

C# M#

Confirmation No. 6059

TC/A.U.: 3634

Examiner: Mitchell, Katherine W.

Date: November 18, 2008

In re Patent Application of

REJC

Serial No. 10/523,631

Filed: February 4, 2005

Title: HIGH-SPEED INDUSTRIAL DOOR WITH A FLEXIBLE CURTAIN

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450



11/18/08 AF

Sir:

☐ Correspondence Address Indication Form Attached.

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting applicant's claim(s).

\$540.00 (1401)/\$270.00 (2401) \$

☒ An appeal **BRIEF** is attached in the pending appeal of the above-identified application \$540.00 (1402)/\$270.00 (2402) \$ 540.00

☒ Credit for fees paid in prior appeal without decision on merits -\$ (510.00)

☐ A reply brief is attached. (no fee)

☐ Pre-Appeal Brief Request for Review form attached.

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)
 One Month Extension \$130.00 (1251)/\$65.00 (2251)
 Two Month Extensions \$490.00 (1252)/\$245.00 (2252)
 Three Month Extensions \$1110.00 (1253)/\$555.00 (2253)
 Four Month Extensions \$1730.00 (1254)/\$865.00 (2254) \$

☐ "Small entity" statement attached.

Less month extension previously paid on -()

TOTAL FEE ENCLOSED \$ 30.00

☐ **CREDIT CARD PAYMENT FORM ATTACHED.**

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**.

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NIXON & VANDERHYTE P.C.

By Atty: Michelle N. Lester, Reg. No. 32,331

Signature: 

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APPEAL BRIEF

Sir:

Applicant submits herewith their renewed Brief on Appeal pursuant to 37 CFR
§41.37.

Adjustment date: 11/19/2008 SMOHAMME
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(I) REAL PARTY IN INTEREST

The real party in interest is the assignee, EFAFLEX Tor- und Sicherheitssysteme GmbH & Co. KG, a corporation of Germany.

(II) RELATED APPEALS AND INTERFERENCES

On information and belief there are no other prior or pending appeals, interferences, or judicial proceedings (past or present), known to appellant, the appellant's legal representative, or assignee, which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

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(III) STATUS OF CLAIMS

Claims 1-8 and 10-12 remain pending. Claim 9 has been canceled. Claims 1-8 and 10-12 have been rejected. The Examiner's July 24, 2008 rejection of claims 1-8 and 10-12 is being appealed. A current listing of the claims that are the subject of this Appeal is presented in the Claims Appendix of this Brief.

(IV) STATUS OF AMENDMENTS

Following consideration of appellant's amended Appeal Brief of April 29, 2008, the Examiner issued a new, non-final Office Action on July 24, 2008. The Official Action indicated that appellant may either file a reply to the Office Action or initiate a new Appeal by filing a Notice of Appeal followed by an Appeal Brief. Appellant has initiated a new Appeal by filing a Notice of Appeal on September 30, 2008 followed by the instant Appeal Brief under 37 CFR §41.37. No other Amendment or Response has been filed to the Examiner's Official Action of July 24, 2008.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

With reference to the substitute specification filed March 6, 2006, the invention relates to a fast-moving industrial gate with a gate body covering the associated gateway and having on either side a strap hinge with a multiplicity of hinge members that are interconnected such that they may be oriented at a relative angle, and which are guided by rollers and lateral guides guiding the gate body free of contact (Figures 1-2, page 1, paragraph [0002]; and page 15, lines 15 and 19 - page 16, line 4, referring to the conventional strap hinge, roller and lateral guide construction shown in DE 19915376.

More specifically, as defined in claim 1, the sole independent claim that is the subject of this appeal, the invention provides an industrial gate 1 with a gate body 2 covering a gateway and having on either side a strap hinge 21 with a multiplicity of hinge members 22 that are interconnected such that they may be oriented at a relative angle, which are guided by rollers 23 in lateral guides guiding said gate body 2 free of contact (Figures 1-2, page 1, paragraph [0002]; and page 15, lines 15 and 19 - page 16, line 4, referring to the conventional strap hinge, roller and lateral guide construction shown in DE 19915376), wherein said gate body 2 includes a multiplicity of stiffening profile members 25,26 (page 16, lines 8-12) and a flexible hanging 27 (page 16, lines 12-15), wherein each stiffening profile member 25,26 extends transversely to the lateral guides across said gate body 2 and connects two respective associated hinge members 22 (Figure 1; page 17, lines 3-5), and wherein said flexible hanging 27 substantially covers a full surface of one side of said gate body 2 while extending across stiffening profile members 25 and being affixed at each stiffening profile member 25,26 (Figure 1; page 18, lines 7-9; Figures 3-4; page 16, lines 16-17, line 27).

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(VI) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-4, 8, and 10-12 stand rejected under 35 USC §102(b) as being anticipated Rejc (USP 5,394,924).

Claims 5-7 stand rejected under 35 USC §103(a) as being unpatentable over Rejc in view of Aquilina (USP 6,363,993).

(VII) ARGUMENT

Claims 1-4, 8, and 10-12 are patentable under 35 USC §102(b) as not having been anticipated by Rejc.

Claim 1 provides *inter alia* that the gate body has "on either side a strap hinge with a multiplicity of hinge members....which are guided by rollers in lateral guides", "a multiplicity of stiffening profile members" and "a flexible hanging". Claim 1 further provides that "each stiffening profile member... connects two respective associated hinge members." Then, in the final paragraph, claim 1 provides that the "flexible hanging substantially covers a full surface of one side of said gate body while extending across stiffening profile members and being affixed at each stiffening profile member." (emphasis added). These features were discussed on page 9 of the as-filed specification and, in the substitute specification filed March 6, 2006, are discussed in paragraph [0036] bridging pages 15-16. Figure 2 is a side view of the strap hinge. Paragraph [0036] also makes reference to DE 19915376 as illustrating a typical strap hinge structure used on each side of the gate body of the invention.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1574 (Fed. Cir. 1986). While other references may be used to interpret an allegedly anticipating reference, anticipation must be found in a single reference. See, e.g., Studiengesellschaft Kohle, G.m.b.H. v. Dart Indus., Inc., 726 F.2d 724, 726-27 (Fed. Cir. 1984). The absence of any element of the claim from the cited reference negates anticipation. See, e.g., Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., Structural Rubber Prods., 749 F.2d at 716-17.

The cited Rejc '924 reference discloses a closure element comprised of stiff slats linked to each other by strap hinges. The Examiner has characterized slats 14 as corresponding to the recited stiffening profile members. The Examiner further characterizes elements 38 and 40 of Rejc '924 as constituting the recited flexible hanging. Claim 1 provides that the flexible hanging "substantially covers a full surface of one side of the gate body while extending across stiffening profile members and being affixed at each stiffening profile member. "The elements identified by the Examiner as a "flexible hanging", elements 38 and 40, are actually reference numbers that are used in Rejc to identify generally the outer main surfaces of the closure element. As clearly understood from a fair reading of Rejc '924, however, these inner and outer surfaces are not constituted by a "flexible hanging" or any other structure disposed to overlay the slats (stiffening profile member according to the Examiner's characterization) of Rejc. Rather, at each slat member 14, 38 and 40 reference numbers simply identify the respective outer surfaces of that slat.

There is no teaching in Rejc of any structure that might be characterized as flexible, much less overlying the full surface of one side of the gate, extending across stiffening profile members, and affixed to each stiffening profile member. Indeed, because elements 38 and 40 of Rejc actually denote parts of the respective slats 14, they are not themselves a further "flexible hanging" affixed to the slats 14; they are the surfaces of the slats 14. Moreover, nothing in Rejc characterizes the elements identified as 38 and 40 as being in any respect "flexible".

In summary, reference numerals 38 and 40 of Rejc denote the two outer main surfaces of the closure element 12, as noted in column 5, lines 26 and 27, thereof. Thus, reference numerals 38 and 40 refer to something which is an integral part of the closure element 12 and there is no teaching of any hanging whatsoever in Rejc, much less a flexible hanging. Instead, the closure element 12 of Rejc is made up of slats, that is stiff panels 14 joined with each other by hinges. In this regard it should also be

noted that Rejc explicitly teaches that the closure element thereof is shaped as a "slatted armor" (see column 7, line 30) and affords sufficient safety against an unauthorized opening (see column 6, lines 46-50). As this reference does not teach anything resembling a flexible hanging much less a flexible hanging overlying stiffening profile members and affixed to each stiffening member, it is clear that Rejc does not anticipate nor in any way render obvious the invention defined by applicant's claim 1 and the claims that depend from it.

For all the reasons advanced above, the Examiner's rejection of claims 1-4, 8 and 10-12 over Rejc cannot properly be sustained.

Claims 5 and 6 are patentable under 35 USC §103(a) as not being obvious from Rejc '924 in view of Aquilina.

These claims are submitted to be patentable over Rejc '924 for the reasons advanced above. Although the Examiner characterizes Aquilina as teaching "the utility of a flexible hanging 50", element 50 of Aquilina is in no respect properly characterized as a "flexible hanging". On the contrary, as clearly understood from Figures 3A and 12 of Aquilina, each element 50 is a rigid panel that is not taught as and would not considered to flex according to the ordinary customary use of the term flexible.

In response to applicant's previously presented arguments regarding a flexible hanging comprising the gate body, the Examiner focused on the limitation to "flexible hanging" and characterized Aquilina as teaching a "flexible hanging" because the stiff panels are "flexible due to the hinges between each panel". In reply, it is respectfully submitted that, to those skilled in this art, "flexible" cannot be properly equated with hinged stiff panels. "Flexible" is understood to mean, for example, "easily bent", "pliable", "elastic". Indeed, the antonym of "flexible" is "stiff" or "rigid". The Examiner's and the Board's attention is directed in this regard to In re Buszard, 84 USPQ2d, 1749 (CAFC 9/27/07).

It is further respectfully submitted that although the Examiner considers the gate body of Aquilina as a whole to be flexible by virtue of stiff panels connected by hinge members, that too is not what applicant has claimed. What applicant has claimed is a flexible hanging extending across stiffening profile members and affixed at each stiffening profile member. Aquilina does not teach in the first instance stiffening profile members, as claimed, connecting two respective associated hinge members of strap hinges. But even if the transverse hinges 10 of Aquilina are characterized as stiffening profile members, Aquilina does not teach a flexible hanging affixed to such stiffening profile members. Rather, stiff panels are affixed to hinges 10. Indeed, the structure the Examiner characterizes as a "flexible hanging" includes both the stiff panels and hinges so that the collective structure the Examiner has identified as a "flexible hanging" is not itself further affixed to "stiffening profile members". Thus, the claim limitations are not met by Aquilina, even with the liberal and creative interpretation offered by the Examiner.

The Examiner also asserts that Aquilina teaches a flexible hanging 50 extending across a stiffening profile member. This is simply not true. Aquilina teaches a plurality of discrete rigid panels 50 interconnected by the hinges 10. There is no teaching of any flexible hanging as defined by applicant's claims much less overlying an entire side of the gate.

As is evident from the foregoing, Aquilina, like Rejc, is directed to a plurality of stiff panels or slats that extend between hinges, in the case of Rejc, or are interconnected by hinges, in the case of Aquilina, but neither teaches the concept of in addition to hinges and stiffening profile members, providing a flexible hanging overlying the stiffening profile members and affixed to each. Because the references cited by the Examiner completely lack the teaching of a flexible hanging covering a full surface of one side of the gate body including the respective stiffening profile members to which it is affixed, the prior art, even if combined in the manner suggested by the Examiner,

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does not meet the limitations of applicant's independent claim, much less the claims that depend from them.

For all the reasons advanced above, the Examiner's rejection based on Rejc and Aquilina cannot properly be sustained.

In view of the foregoing, there is simply no proper basis for the rejection of applicant's claims 1-8 and 10-12 under 35 USC §102(b) or under 35 USC §103(a) based on Rejc '924 and/or Aquilina.

CONCLUSION

For all the reasons advanced above, reversal of the Examiner's Rejection and allowance of all pending claims is solicited.

Respectfully submitted,

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(VIII) CLAIMS APPENDIX

1. (Previously presented) Industrial gate with a gate body covering a gateway and having on either side a strap hinge with a multiplicity of hinge members that are interconnected such that they may be oriented at a relative angle, which are guided by rollers in lateral guides guiding said gate body free of contact,

wherein said gate body includes a multiplicity of stiffening profile members and a flexible hanging,

wherein each stiffening profile member extends transversely to the lateral guides across said gate body and connects two respective associated hinge members, and

wherein said flexible hanging substantially covers a full surface of one side of said gate body while extending across stiffening profile members and being affixed at each stiffening profile member.

2. (Previously presented) The industrial gate in accordance with Claim 1, wherein said flexible hanging is subdivided into several hanging segments.

3. (Previously presented) The industrial gate in accordance with Claim 1, wherein said flexible hanging is affixed across an entire width of the gate at a respective adjacent stiffening profile member.

4. (Previously presented) The industrial gate in accordance with Claim 1, wherein said flexible hanging is affixed at said respective adjacent stiffening profile member in positive engagement.

5. (Previously presented) The industrial gate in accordance with Claim 1, wherein said flexible hanging includes in a range of each stiffening profile member a

reinforcing strip that engages in an undercut groove at said associated stiffening profile member.

6. (Previously presented) The industrial gate in accordance with Claim 5, wherein in portions of said gate body in which said flexible hanging extends across a stiffening profile member, the reinforcing strip is welded to said flexible hanging.

7. (Previously presented) The industrial gate in accordance with Claim 5, wherein one respective reinforcing strip is formed on edge sides of said flexible hanging or of each hanging segment thereof, respectively, which runs in parallel with said associated stiffening profile member.

8. (Previously presented) The industrial gate in accordance with Claim 1, wherein ends of each stiffening profile member engage in said hinge members so as to be accommodated therein when viewed in a direction of depth of said gate body, with sides thereof facing said flexible hanging substantially being flush with surfaces of said hinge members.

Claim 9. (Canceled).

10. (Previously presented) The industrial gate in accordance with Claim 1, wherein in a closed condition of said gate body there are a hinge plane and a hanging plane, wherein said hinge plane is substantially defined by pivot axes of said hinge members that are interconnected such that they may be oriented at a relative angle, and said hanging plane is substantially defined by an extension of a major surface of said flexible hanging, with said hinge plane and said hanging plane not coinciding.

11. (Original) The industrial gate in accordance with Claim 10, characterized in that said hinge plane and said hanging plane are arranged in immediate vicinity of each other.

12. (Previously presented) The industrial gate in accordance with Claim 1, characterized in that said flexible hanging is affixed to said stiffening profile members in respective locations adjacent a pivot axis of said hinge members that are interconnected such that they may be oriented at a relative angle.

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(IX) EVIDENCE APPENDIX

(NONE)

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(X) RELATED PROCEEDINGS APPENDIX

(NONE)